

**AGENDA — February 5, 2002 Business Taxes Committee Meeting**  
***Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries***

<p><b>Action 1 — Consent Items</b>  Agenda, pages 3 – 7.</p>	<p>Adopt portions of proposed Regulation 1807 as agreed upon by interested parties and staff.</p>
<p><b>Action 2 — Minimum factual data necessary to establish a date of knowledge.</b>  1807(a)(2)(E)  Agenda, page 8.  Issue Paper Alternative 2, item 1.</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> <li>1) Staff's recommendation to incorporate all of subdivision (a)(2)(E) to specify that in cases that involve shipments from an out-of-state location and the claim is that the tax is sales tax and not use tax, evidence must be submitted to show participation by an in-state office of the out-of-state retailer, and title transfer in this state,</li> </ol> <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> <li>2) MBIA's proposal to delete the provisions of subdivision (a)(2)(E) that require evidence be submitted to show participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.</li> </ol>
<p><b>Action 3 — The Hearing by Board Members.</b>  1807 (c)(5)(B)1. and (c)(5)(B)2.  Agenda, page 9.  Issue Paper Alternative 1.</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> <li>1) Staff's recommendation to continue the current procedures whereby a Hearing by the Board Members is at their discretion,</li> </ol> <p style="text-align: center;">OR</p> <ol style="list-style-type: none"> <li>2) Mr. Andal's proposal to make the Hearing by the Board Members automatic rather than discretionary.</li> </ol>

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<p><b>Action 4 — Regulations governing hearing.</b></p> <p>1807 (c)(5)(B)2.  Agenda, page 10.  Issue Paper Alternative 2, item 2.</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> <li>1) Staff's recommendation to incorporate into the proposed regulation a provision to specify that this hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice,</li> <li style="text-align: center;">OR</li> <li>2) MBIA's proposal to exclude the applicability of section 5080, Burden of Proof, from the proposed regulation.</li> </ol>
<p><b>Action 5 —. Section 6066.3 inquiries</b></p> <p>1807(g)(1)  Agenda, pages 10 - 11.  Issue Paper Alternative 2, item 3.</p>	<p>Adopt either:</p> <ol style="list-style-type: none"> <li>1) Staff's recommendation to specify that inquiries concerning improper distributions are in addition to, but separate and apart from, procedures established under RTC section 6066.3 for making inquiries regarding improper distributions,</li> <li style="text-align: center;">OR</li> <li>2) MBIA's recommendation to add the words "equivalent" and "or claims containing substantially the same reasons for error as another claim or inquiry," and delete the last sentence in subdivision (g)(1), to further clarify procedures in regard to section 6066.3 inquiries.</li> </ol>
<p><b>Action 6 — Authorization to Publish</b></p> <p>(whichever language is approved)</p>	<p>Recommend the publication of the proposed Regulation 1807 as adopted in the above actions.</p> <p>Operative Date: January 1, 2003  Implementation: 30 days following OAL approval</p>

**AGENDA — February 5, 2002 Business Taxes Committee Meeting**  
***Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries***

Action Item	Staff and Industry's Proposed Regulatory Language
<p><b>Action 1 — Consent Items</b></p>	<p><b><u>Regulation 1807. Process for Reviewing Local Tax Reallocation Inquiries.</u></b></p> <p><u>Reference: Sections 7209, 7223, Revenue and Taxation Code.</u></p> <p><b><u>(a) DEFINITIONS.</u></b></p> <p>For inquiries under Revenue and Taxation Code section 6066.3, see subdivision (g) of this regulation.</p> <p><u>(1) INQUIRING JURISDICTIONS AND THEIR CONSULTANTS (IJC). “Inquiring Jurisdictions and their Consultants (IJC)” means any city, county, city and county, or transactions and use tax district of this state which has adopted a sales or transactions and use tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of the sales or transactions and use tax ordinance of the city, county, city and county, or transactions and use tax district of this state. Except for submittals under Revenue and Taxation Code section 6066.3, IJC also includes any consultant that has entered into an agreement with the city, county, city and county, or transactions and use tax district, and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated person to examine the appropriate sales, transactions, and use tax records of the Board.</u></p> <p><u>(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX. Except for submittals under Revenue and Taxation Code section 6066.3, “claim or inquiry” means a written request from an IJC for investigation of suspected improper distribution of local tax. The inquiry must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data must include at a minimum all of the following for each business location being questioned:</u></p> <p><u>(A) Taxpayer name, including owner name and d.b.a. (doing business as) designation.</u></p> <p><u>(B) Taxpayer’s permit number or a notation stating “No Permit Number.”</u></p> <p><u>(C) Complete business address of the taxpayer.</u></p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p><b>Action 1 — Consent Items</b> (Continued)</p>	<p><u>(D) Complete description of taxpayer's business activity or activities.</u></p> <p><u>(F) Name, title, and phone number of the contact person.</u></p> <p><u>(G) The tax reporting periods involved.</u></p> <p><u>(3) DATE OF KNOWLEDGE. "Date of knowledge" shall be the date the inquiry of suspected improper distribution of local tax that contains the facts required by subdivision (a)(2) of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. If the IJC is not able to obtain the above minimum factual data, but provides a letter with the inquiry, indicating what the IJC has done to obtain the minimum factual data required by subdivision (a)(2) of this regulation, the Board can use the date this inquiry is received as the date of knowledge.</u></p> <p><u>(4) BOARD MANAGEMENT. "Board Management" consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.</u></p> <p><b><u>(b) INQUIRIES.</u></b></p> <p><u>(1) SUBMITTING INQUIRIES. Every inquiry of local tax allocation must be submitted in writing and shall include the information set forth in subdivision (a)(2) of this regulation. Except for submittals under Revenue and Taxation Code section 6066.3, all inquiries are to be sent directly to the Allocation Group in the Refund Section of the Board's Sales and Use Tax Department.</u></p> <p><u>(2) ACKNOWLEDGEMENT OF INQUIRY. The Allocation Group will acknowledge inquiries after they are received. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a date of knowledge under subdivision (a)(2) of this regulation. The Allocation Group will review the inquiry and notify the IJC if the inquiry does not qualify to establish a date of knowledge.</u></p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p><b>Action 1 — Consent Items</b> (Continued)</p>	<p><b><u>(c) REVIEW PROCESS.</u></b></p> <p><u>(1) REVIEW BY ALLOCATION GROUP SUPERVISOR.</u> The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that a misallocation has not occurred and recommends that a request for reallocation be denied, the IJC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that a misallocation has not occurred must state the specific facts on which the conclusion was based. If the IJC contacts the Allocation Group Supervisor, the IJC must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position at this time.</p> <p><u>(2) REVIEW BY REFUND SECTION SUPERVISOR.</u> Subsequent to the submission of additional information by the IJC, if the Allocation Group Supervisor upholds the denial, the IJC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for reallocation" with the Refund Section Supervisor. The petition for reallocation must state the specific reasons of disagreement with the Allocation Group Supervisor's findings. If a petition for reallocation is filed by the IJC, the Refund Section Supervisor will review the request for reallocation and determine if any additional staff investigation is warranted prior to making a decision. If no basis for reallocation is found, the petition will be forwarded to the Local Tax Appeals Auditor.</p> <p><u>(3) REVIEW BY LOCAL TAX APPEALS AUDITOR.</u> A conference between the Local Tax Appeals Auditor and the IJC will be scheduled. The IJC may, however, at its option, provide a written brief instead of attending the conference. If a conference is held, the Local Tax Appeals Auditor will consider oral arguments, as well as review material previously presented by both the IJC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&amp;R) detailing the facts and law involved and the conclusions reached.</p> <p><u>(4) REVIEW BY BOARD MANAGEMENT.</u> If the D&amp;R's recommendation is to deny the petition, the IJC will have 30 days from the date of mailing of the D&amp;R to file a written request for review of the D&amp;R with Board Management. The request must state the specific reasons of disagreement with the D&amp;R and submit any additional information in the IJC's possession that supports its position. Board Management will only consider the petition and will not meet with the IJC. The IJC will be notified in writing of the Board Management's decision. If a written request for review of the D&amp;R is not filed with Board Management within the 30-day period, the D&amp;R becomes final at the expiration of that period.</p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p><b>Action 1 — Consent Items</b> (Continued)</p>	<p><u>(5) REVIEW BY BOARD MEMBERS.</u> If Board Management upholds a finding that no improper distribution has occurred, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reason of disagreement with Board Management findings.</p> <p><u>(A) Petition for Hearing.</u> The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. The request shall include the name of the Board Member whose district issued the seller's permit of the taxpayer whose local tax allocation is at issue in the inquiry and the name of the Board Member of the jurisdiction that filed the inquiry. If a petition for hearing is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.</p> <p><u>(C) Presentation of New Evidence.</u> If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(B)(2) of this regulation, no additional evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be considered at the Board hearing.</p> <p><b><u>(d) TIME LIMITATIONS.</u></b></p> <p><u>(1) An IJC will be limited to one 30-day extension of the time limit established for each level of review through the Local Tax Appeals Auditor level.</u></p> <p><u>(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IJC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.</u></p> <p><u>(3) By following the time limits set forth in subdivisions (c) and (d), any date of knowledge established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new date of knowledge as of the date of receipt of the new information.</u></p>

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Action Item	Staff and Industry's Proposed Regulatory Language
<p><b>Action 1 — Consent Items</b> (Continued)</p>	<p><b><u>(e) APPEAL RIGHTS OF JURISDICTIONS THAT WILL LOSE REVENUE AS THE RESULT OF A REALLOCATION.</u></b></p> <p><u>(1) If at any time during this review process the Board's investigation determines that a misallocation has occurred, any jurisdiction that will lose 5% of its average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice, to contact the Allocation Group to discuss the proposed reallocation. The losing jurisdiction may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing Jurisdiction" includes gaining jurisdictions where the original decision was overturned in favor of a previously losing jurisdiction. The reallocation will be postponed until the period for the losing jurisdiction to request a hearing with the Allocation Group has expired.</u></p> <p><u>(2) If the losing jurisdiction contacts the Allocation Group and subsequently petitions the proposed reallocation, the postponement will be extended pending the final outcome of the petition.</u></p> <p><b><u>(f) LIMITATION PERIOD FOR REDISTRIBUTIONS.</u></b></p> <p><u>Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution.</u></p> <p><b><u>(g) APPLICATION TO SECTION 6066.3 INQUIRIES.</u></b></p> <p><u>(2) The terms and procedures set forth in subdivision (c)(2) through (c)(5) of this regulation shall also apply to appeals from reallocation determinations made under Revenue and Taxation Code section 6066.3.</u></p> <p><b><u>(h) The provisions of this regulation shall apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to existing inquiries and appeals procedures. However, for inquiries filed prior to January 1, 2003, the IJC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.</u></b></p>

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Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by MBIA
<p><b>Action 2 -</b> Minimum factual data necessary to establish a date of knowledge</p>	<p><b><u>(a) DEFINITIONS.</u></b></p> <p><u>(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX</u></p> <p><u>(E) Specific reasons and evidence why the taxpayer's allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location and that it is a place of business as defined by Regulation 1802 must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.</u></p>	<p>[No language provided]</p>	<p><b><u>(a) DEFINITIONS.</u></b></p> <p><u>(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX</u></p> <p><u>(E) Specific reasons and evidence why the taxpayer's allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location and that it is a place of business as defined by Regulation 1802 must be submitted. <del>In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.</del></u></p>



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Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by MBIA
<b>Action 3 –</b> The Hearing by Board Members.	<p><b><u>(c) REVIEW PROCESS.</u></b></p> <p><b><u>(5) REVIEW BY BOARD MEMBERS.</u></b></p> <p><b><u>(B) Consideration by Full Board.</u></b></p> <p><u>1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the first calendar date, the matter will be considered closed.</u></p> <p><u>2. The Hearing. If the Board decides to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under subdivision (e) of this regulation will also be notified of the scheduling of the Board hearing.</u></p>	<p><b><u>(c) REVIEW PROCESS.</u></b></p> <p><b><u>(5) REVIEW BY BOARD MEMBERS.</u></b></p> <p><del><b><u>(B) Consideration by Full Board.</u></b></del></p> <p><del><u>1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the first calendar date, the matter will be considered closed.</u></del></p> <p><b><u>(B) The Hearing. After receiving the petition for hearing, the Board Proceedings Division will automatically place the matter on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under this regulation will also be notified of the scheduling of the Board hearing.</u></b></p>	<p><b><u>(c) REVIEW PROCESS.</u></b></p> <p><b><u>(5) REVIEW BY BOARD MEMBERS.</u></b></p> <p><b><u>(B) Consideration by Full Board.</u></b></p> <p><u>1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the first calendar date, the matter will be considered closed.</u></p> <p><u>2. The Hearing. If the Board decides to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under subdivision (e) of this regulation will also be notified of the scheduling of the Board hearing.</u></p>
<b>Action 4 –</b> Regulations governing hearings.	<p><u>This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</u></p>	<p><u>This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</u></p>	<p><u>This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice <b>excluding section 5080.</b></u></p>

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Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by MBIA
<b>Action 5 –</b> Section 6066.3 inquiries.	<p><b><u>(g) APPLICATION TO SECTION 6066.3 INQUIRIES.</u></b></p> <p><u>(1) The procedures set forth herein for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of Revenue and Taxation Code section 6066.3 for making inquiries regarding improper distributions. If inquiries regarding suspected improper distribution of local tax are received both under the procedures set forth herein and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure.</u></p>	<p>[No language provided]</p>	<p><b><u>(g) APPLICATION TO SECTION 6066.3 INQUIRIES.</u></b></p> <p><u>(1) The procedures set forth herein for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of Revenue and Taxation Code section 6066.3 for making inquiries regarding improper distributions. If <b>equivalent inquiries or claims containing substantially the same reasons for error as another claim or inquiry</b> regarding suspected improper distribution of local tax are received both under the procedures set forth herein and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure.</u></p>

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- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

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## PROPOSED REGULATION 1807, PROCESS FOR REVIEWING LOCAL TAX REALLOCATION INQUIRIES

### I. Issue

Should proposed Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, be adopted?

### II. Staff Recommendation

Staff recommends the adoption of proposed Regulation 1807, in order to promulgate in regulatory form the process for appealing local tax reallocation decisions, which was previously provided to cities and counties, as shown in Exhibit 3. (See discussion on Issue Paper (IP) pages 2 through 6.)

Staff recommends the provisions of this regulation apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to existing reallocation and appeals procedures.

### III. Other Alternative(s) Considered

#### A. Alternative 1

Board Member Dean Andal proposes to adopt staff's recommendation, except:

Make the granting of an appeal to the Board automatic rather than discretionary on the part of the Board, in subdivision (c)(5)(B). (See IP pages 4-5, and 8; and Agenda action item 3.)

#### B. Alternative 2

Municipal Resource Consultants, MBIA MuniServices Company (MBIA) proposes to adopt staff's recommendation, except:

1. Delete the provisions of subdivision (a)(2)(E) that require evidence be submitted to show participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state. (See IP pages 3 and 10; and Agenda action item 2.)
2. Exclude the reference to section 5080, *Burden of Proof*, of the Rules of Practice from this regulation in subdivision (c)(5)(B)(2). (See IP pages 5 and 10; and Agenda action item 4.)
3. Add the words "equivalent" and "or claims containing substantially the same reasons for error as another claim or inquiry," and delete the last sentence in subdivision (g)(1), to further clarify procedures in regard to section 6066.3 inquiries. (See IP pages 5-6, and 10-11; and Agenda action item 5.)

Exhibit 2 is a comparison of staff's and interested parties' proposals.

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## **IV. Background**

Staff proposes to publicize in regulatory form, the process for appealing local tax reallocation decisions (“Process”). These procedures have been in place since 1996. They have been published in the Compliance Policy and Procedural Manual (CPPM) section 160.000 et. seq since 1996 and have been accepted and used successfully by inquiring jurisdictions and their consultants (IJC) as the proper appeals method. They have recently been moved to the CPPM 905.000 et. seq, and are being replaced with the latest version of the notice (1998). For a thorough explanation of the local tax, its history, and the need for local tax reallocation procedures, please see Exhibit 6.

### **Meetings with Interested Parties**

Meetings were held with interested parties on October 18, 2001 and on December 4, 2001. Representatives from various local governments and consulting firms were in attendance to discuss staff’s proposed language. Submissions from Board Member Dean Andal and Mr. Al Koch, General Counsel for Municipal Resource Consultants, MBIA MuniServices Company (MBIA) were presented. In response to these proposals and to other interested parties’ concerns expressed at the meetings, staff amended the proposed language.

## **V. Staff Recommendation**

### **A. Description of the Staff Recommendation**

Staff recommends the adoption of proposed Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, which is intended to implement, interpret, and make specific the provisions of RTC sections 7209 and 7223, as illustrated in Exhibit 3. Staff recommends the provisions of this regulation apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to existing reallocation and appeals procedures. Provisions of the regulation include:

- Definitions: Staff proposes to incorporate in subdivision (a) the definitions for IJC, claim (inquiry) of incorrect or non-distribution of local tax, date of knowledge (DOK), and Board Management.
- The minimum factual data necessary to establish a DOK, in subdivision (a)(2).
- The process for submittals and acknowledgements of inquiries, in subdivision (b).
- The various levels of review for these inquiries, in subdivision (c).
- The implications of time limitations for the levels of review, in subdivision (d).
- The appeal rights of jurisdictions that will lose revenue as the result of a reallocation, in subdivision (e).
- An explanation of RTC section 7209, *Limitation; Redistributions*, in subdivision (f).
- The process for reviewing inquiries submitted under RTC section 6066.3, in subdivision (g)
- An operative date, in subdivision (h).

Staff incorporated a number of suggestions from interested parties, including most of those submitted by MBIA (see Exhibit 5). Specifically, staff has addressed MBIA’s concerns as expressed in suggestion

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numbers 1, 3, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16 in its November 6, 2001, letter and MBIA withdrew its suggestions number 5 and 11. Following are discussions of the remaining suggestions from MBIA (suggestions 2, 4, 17 and 18) and a submission from Board Member Dean Andal.

**Minimum Factual Data Necessary to Establish a Date of Knowledge**

In subdivision (a)(2)(E), staff recommends that sufficient factual data to support the probability that local tax has been erroneously allocated and distributed must include (among other items):

Specific reasons and evidence why the taxpayer's allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location and that it is a place of business as defined by Regulation 1802 must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.

*Suggestion 2* of MBIA's letter (Exhibit 5) maintains that the final sentence of subdivision (a)(2)(E) states a rule of substance that is in dispute in a number of pending inquiries. MBIA believes the last sentence in this paragraph should not be included in the proposed regulation. MBIA claims that this provision would deny any administrative remedy for this type of claim and that such a provision is unnecessary and unfair. Also MBIA indicated that there are already many claims pending on this issue that have already been appealed to top management. These cases that have been appealed to top management include a mass appeal of over 1,000 cases which are still pending at the level of review by Board Management. The issue involved is whether or not the applicable tax is the sales or use tax. Other than the 1,000 mass appeal cases, there are only 15 cases currently being held in abeyance. For sales tax to apply, the sale must take place in California, and there must be participation in the sale by a pre-existing local office of the retailer. (Regulation 1620, *Interstate and Foreign Commerce*). Staff believes that in order to support the probability that local tax has been erroneously allocated and distributed, in cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted to show that both of the factors listed above exist. Neither factor alone demonstrates the possibility of an improper allocation. Therefore, staff believes that in these types of cases a date of knowledge of the probability of an improper distribution cannot be established without the specific information requested under subdivision (a)(2)(E).

**Tracking Date of Knowledge**

"Date of knowledge" is the date the inquiry of suspected improper distribution of local tax that contains the facts required by subdivision (a)(2) of this regulation is received by the Board, unless an earlier date is operationally documented by the Board. If the IJC is not able to obtain the minimum factual data enumerated in the regulation, but provides a letter with the inquiry, indicating what the IJC has done to obtain the minimum factual data required by subdivision (a)(2) of this regulation, the Board can use the date this inquiry is received as the date of knowledge.

*Suggestion 4* of MBIA's letter indicated that subdivision (a)(3) references dates of knowledge being "operationally documented by the Board." MBIA asked if the Board could provide to the IJC's a means

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of searching for such DOK's by jurisdiction and sales tax registration number in order to reduce the submission of duplicate claims. During the meeting with interested parties MBIA questioned if this type of information could be provided via the Board's Internet site. This information would be for reallocations that are not due to inquiries from IJC's but are generated by a variety of Board processes. The Technology Services Division (TSD) examined the possibility of providing this type of information to the IJC's. TSD indicated that although implementing such a system may be possible, it would require substantial Board resources for successful implementation. Therefore, MBIA is currently not pursuing this suggestion.

**Review by Board Members**

The review process that was established in February of 1996 and amended in October of 1998, did not include provisions regarding how the review by the Board Members, if they wished to review the case, was to take place. However, the complete Process which includes a description of the current administrative procedures for this review, was approved at the November 28, 2001, Business Taxes Committee meeting for publication in the Compliance Policy and Procedural Manual (CPPM) Chapter 9, *Miscellaneous*. Accordingly, staff incorporated into subdivision (c)(5) of the proposed regulation guidelines and specific timelines to be observed by IJC's and staff in regard to review by Board Members. Following is a brief explanation of staff's recommendation:

**1. Petition for Hearing**

When filing a petition for hearing, the IJC shall file the petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. The request shall include the name of the Board Member whose district issued the seller's permit of the taxpayer whose local tax allocation is at issue in the inquiry, and the name of the Board Member of the jurisdiction that filed the inquiry. If a petition for hearing by the Board is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.

**2. Consent Calendar**

Staff proposes that once the IJC files its petition for hearing, Board Proceedings Division will place the petition for hearing on a Consent Calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the first calendar date, the matter will be considered closed.

**3. The Hearing**

If the Board decides to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board.

Board Member Dean Andal proposes making the granting of an appeal to the Board automatic upon request by the IJC rather than discretionary on the part of the Board, in subdivision (c)(5)(B). Staff's recommendation is intended to follow the directive of the Board regarding hearings by the Board Members by not providing for automatic appeal to the Board for reallocation cases. In February of 1996, the Local Revenue Committee of the Board approved the current Process, rejecting suggestions by certain cities that there be an automatic appeal to the Board. At that time, the Board approved the Local Revenue Committee's recommendation that the Board would hear a local tax reallocation appeal only if a

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Member so requested and a majority of the Board agreed to hear the appeal. Staff believes that if hearings are granted automatically, there is likely to be an increase in local tax allocation appeals to the Board Members, and such appeals may consume an inordinate amount of Board Members' time.

Since the current process was established by Board directive in 1996, there has only been one request for review by Board Members. However, the case was never placed on the Administrative Calendar for approval by the full Board to hear the case, and therefore there was no local tax reallocation hearing.

**Presentation of New Evidence**

The Board hearing is not designed to accommodate the presentation of new arguments or evidence not previously considered by the earlier levels of review, and generally, for hearings on sales and use tax cases, if new evidence is presented at the hearing, the Board orders that the new evidence first be presented to the Appeals Section for their review. Therefore, under the proposed regulation, staff is recommending that if new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Further, notwithstanding subdivision (c)(5)(C) of this regulation, no additional evidence or arguments will be considered at the Board hearing.

**Rules of Practice**

MBIA proposes that a reference to section 5080, Burden of Proof, not be included in Regulation 1807. Staff believes this section affects only the burden of producing evidence and reflects the normal rule that a party advancing a position must bring forward the evidence to support that position. Staff believes that the Rules of Practice should apply uniformly to all IJC's in the same manner as it does to all taxpayers. This is an essential section within the Rules of Practice and it is not possible to exclude just this section for the IJC's under this regulation and not all other parties for which the Rules of Practice apply.

**Section 6066.3 Inquiries**

In 1999 the Legislature enacted RTC section 6066.3 which established a process for local jurisdictions to report to the Board information regarding new business licensees that may need seller's permits and to submit information regarding improper distributions of local tax. See Exhibit 4 and page 4 of Exhibit 6.

The procedures set forth in proposed Regulation 1807 based on the existing Process for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of RTC section 6066.3 for making inquiries regarding improper distributions. If inquiries regarding suspected improper distribution of local tax are received both under the procedures set forth in Regulation 1807 and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure. Moreover, the terms and procedures set forth in subdivision (c)(2) through (c)(5) of this regulation shall also apply to appeals from reallocation determinations made under RTC section 6066.3.

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*Suggestions 17 and 18* of MBIA's letter (Exhibit 5) deal with issues regarding the procedures for making submissions under RTC section 6066.3 (a) as enacted by AB 990. MBIA indicated that there appears to be a substantial possibility for confusion regarding the meaning and effect of certain provisions of the Memorandum of Understanding (MOU) executed by the Board, the League of California Cities and the California State Association of Counties, and the provisions of the proposed regulation. Staff amended the language of the proposed regulation to clarify that the procedures set forth in the proposed regulation for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of RTC section 6066.3 for making inquiries regarding improper distributions. Also, staff removed any mention of the MOU in the proposed regulation in subdivision (g). Further, during the interested parties meeting, it was decided that any additional issues related to MBIA's suggestions 17 and 18, would be addressed during future meetings between the Board, the League of California Cities and the California State Association of Counties regarding the procedures for making submissions under AB 990.

MBIA proposes to add the words "equivalent" and "or claims containing substantially the same reasons for error as another claim or inquiry" to the second sentence of subdivision (g)(1), and delete the last sentence in subdivision (g)(1), to further clarify procedures in regard to section 6066.3 inquiries. Staff believes that the procedures established under RTC section 6066.3 for submitting inquiries are of equal stature with the regulation and are separate and apart therefrom. Staff recommends against adding the words "equivalent" and "or claims containing substantially the same reasons for error as another claim or inquiry" to the second sentence of subdivision (g)(1), and deleting the last sentence of subdivision (g)(1) as proposed by MBIA. The proposed regulation interprets and implements RTC sections 7209 and 7223 only, not RTC section 6066.3. The standards for date of knowledge are different, and the proposed regulation is intended to address only reallocation inquiries.

**Operative Date**

Since proposed Regulation 1807 incorporates various changes in procedures, staff recommends a prospective operative date to provide time to notify staff and all affected parties of the change, and to allow existing procedures to be used for all matters currently under review. Staff further proposes that for inquiries and appeals filed prior to the operative date, the IJC may elect in writing to proceed under the provisions of the proposed regulation.

**B. Pros of the Staff Recommendation**

- Sets forth in regulatory form current administrative procedures followed by the Board regarding local tax reallocations.
- Provides for a timely resolution of reallocation cases by specifying reasonable limits for review at the different levels.
- Is consistent with the previous Board directive regarding Hearings by the Board Members, by not providing for automatic appeal to the Board for reallocation cases.

**C. Cons of the Staff Recommendation**

- Requires regulatory change.



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- Does not adopt the proposed streamlined process for determining whether the Board Members will hear a reallocation case.
- Does not list specific procedures to be used for inquiries submitted under RTC section 6066.3.

**D. Statutory or Regulatory Change**

No statutory change is required. However, regulatory action is required.

**E. Administrative Impact**

Staff will be required to notify taxpayers and local jurisdictions and their consultants of the new regulation through an article in the Tax Information Bulletin and a special notice to the cities and counties. Appropriate revisions must be made to Publication 28, "Tax Information for City and County Officials," and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous* - Reallocation Process, when this regulation is approved by the Office of Administrative Law.

**F. Fiscal Impact**

**1. Cost Impact**

No additional costs. Staff will notify taxpayers of the new regulation through a Tax Information Bulletin (TIB) article. The workloads associated with publishing and distributing the TIB and revising Publication 28 and CPPM 9, are considered routine and any corresponding cost would be within the Board's existing budget.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact**

By further disseminating the process for reviewing local tax reallocation inquiries to the inquiring jurisdictions and their consultants, and to taxpayers, the Board is better able to administer the local tax pursuant to contracts with each city, county, city and county, and redevelopment agency in accordance with RTC section 7202. Accordingly, the cities, counties, and redevelopment agencies are better served by the Board.

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## **H. Critical Time Frames**

An operative date of January 1, 2003 is recommended. The regulation will become effective 30 days after approval by the Office of Administrative Law.

## **VI. Alternative 1**

### **A. Description of the Alternative**

Board Member Dean Andal proposes to adopt staff's recommendation, except for making the granting of an appeal to the Board automatic rather than discretionary on the part of the Board, in subdivision (c)(5)(B).

Staff's recommendation is intended to follow the earlier directive from the Board regarding Hearings by the Board Members by not providing for automatic appeal to the Board for reallocation cases. That directive has a two step process. First, the IJC's must file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision in order to determine if a hearing will be granted. Second, if the Board decides to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board. Therefore, under staff's language, whether a case will be heard or not is left to the discretion of the Board Members. Under Mr. Andal's proposal, if the IJC files the request for hearing within 90 days of the date of mailing of Board Management's decision, Board Proceedings Division, after receiving the petition for hearing, will automatically place the matter on the Hearing Calendar for consideration by the full Board.

Mr. Andal proposes that by eliminating the double hearing process established under the current Process, the Board Members will be able to decrease the number of difficult decisions they are required to make from two per case to one.

Moreover, the administrative costs associated with scheduling one meeting instead of two are reduced not only for the Board but also for the local jurisdictions. Further, by only having one meeting the time for this process of review is reduced by a minimum of 90 days. Hence, if it is determined that a misallocation occurred, a correction can be made more quickly.

### **B. Pros of the Alternative**

- Sets forth in regulatory form administrative procedures regarding local tax reallocations.
- Reduces the time for the review process by a minimum of 90 days.
- Corrects misallocations more quickly.
- Results in potential cost avoidance for the Board and for the local jurisdictions associated with the elimination of one level of scheduled meetings.

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**C. Cons of the Alternative**

- Requires regulatory change.
- If automatic review by the Board is made available, it may result in a significant increase in local tax allocation appeals to the Board Members, and such appeals may consume an inordinate amount of Board Member time.

**D. Statutory or Regulatory Change**

No statutory change is required. However, regulatory action is needed.

**E. Administrative Impact**

Staff will be required to notify taxpayers and local jurisdictions and their consultants of the new regulation through an article in the Tax Information Bulletin and a special notice to the cities and counties. Appropriate revisions must be made to Publication 28, "Tax Information for City and County Officials," and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous* - Reallocation Process when this regulation is approved by the Office of Administrative Law.

**F. Fiscal Impact**

**1. Cost Impact**

No additional cost. Staff will notify taxpayers of the new regulation through a Tax Information Bulletin (TIB) article. The workloads associated with publishing and distributing the TIB and revising Publication 28 and CPPM 9, are considered routine and any corresponding cost would be within the Board's existing budget. There could be a potential unknown workload avoidance resulting from the elimination of the Administrative Hearing. However, this could be offset by a potential workload increase associated with additional Appeals Hearings.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact**

By further disseminating the process for reviewing local tax reallocation inquiries to the inquiring jurisdictions and their consultants, and to taxpayers, the Board is better able to administer the local tax pursuant to contracts with each city, county, city and county, and redevelopment agency in accordance with RTC section 7202. Accordingly, the cities, counties, and redevelopment agencies are better served by the Board.

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## **H. Critical Time Frames**

An operative date of January 1, 2003 is recommended. The regulation will become effective 30 days after approval by the office of Administrative Law.

## **VII. Alternative 2**

### **A. Description of the Alternative**

MBIA proposes adoption of staff's recommended language with the following exceptions:

#### **Minimum Factual Data Necessary to Establish a Date of Knowledge**

MBIA proposes to delete the provisions of subdivision (a)(2)(E) that require evidence be submitted to show participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.

MBIA in their *Suggestion 2* (Exhibit 5), maintains that the final sentence of subdivision (a)(2)(E) states a rule of substance that is in dispute in a number of pending inquiries. MBIA claims that the last sentence of this subdivision, which it proposes to delete, would deny any administrative remedy for this type of claim and that such a provision is unnecessary and unfair. MBIA also points out that there are already many claims pending on this issue that have already been appealed to Board Management. Moreover, MBIA believes that since DOK requirements have not been changed, this requirement should not be included until pending disputes have been resolved.

#### **Rules of Practice**

MBIA is not in agreement with including a reference to section 5080, *Burden of Proof*, of the Rules of Practice, and does not want this particular section to be applicable to this regulation. Section 5080 states that except as otherwise specifically provided by statute or in these regulations, the burden of proof shall ordinarily be upon the taxpayer as to all issues of fact. In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue shall be upon the Department. MBIA states that the Board is acting as a fiduciary under the Bradley-Burns contract and that California statutory law relating to fiduciaries places the burden of proof on contractual fiduciaries in disputes with their principals. MBIA also points out that there is no contrary statutory law and that, under general principles governing "burden of proof," the Board must be regarded as having the burden of proof in these disputes.

#### **Section 6066.3 Inquiries**

MBIA's *Suggestions 17 and 18* (Exhibit 5) concern the procedures for making submissions under RTC section 6066.3 (a) as enacted by AB 990. MBIA indicated that there appears to be a substantial possibility for confusion regarding the meaning and effect of certain provisions of the Memorandum of Understanding (MOU) executed by the Board, the League of California Cities and the California State Association of Counties, and the provisions of the proposed regulation. MBIA proposes to add the words "equivalent" and "or claims containing substantially the same reasons for error as another claim or inquiry" to the second sentence of subdivision (g)(1), and delete the last sentence in subdivision (g)(1), to further clarify procedures in regard to section 6066.3 inquiries.

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MBIA believes that without this language, subdivision (g) of the proposed regulation creates additional opportunities for confusion between provisions of this regulation and provisions of RTC section 6066.3 as established by AB 990 and the MOU. MBIA believes that the proposed regulation implies that the procedures established in the MOU are of equal stature with those to be provided in the formal regulation. If that is actually intended, then those procedures should be added to proposed Regulation 1807.

**B. Pros of the Alternative**

- Sets forth in regulatory form administrative procedures regarding local tax reallocation.
- Is consistent with the previous Board directive regarding Hearings by the Board Members, by not providing for automatic appeal to the Board for reallocation cases.
- Provides a specific time period for the review of new evidence that may be presented at the level of review by Board Members.

**C. Cons of the Alternative**

- Requires regulatory change.
- Does not require the IJC to provide all the minimum factual data that is necessary to support the probability that local tax has been erroneously allocated and distributed in order to establish a DOK.
- Is not consistent with other Revenue and Taxation Code provisions as it exempts the IJC from the burden of proof under Rules of Practice section 5080.
- The additional language under subdivision (g)(1) may cause confusion between the provisions of the MOU and the proposed regulation as the proposed regulation interprets and implements sections 7209 and 7223 only, not 6066.3. Further, by deleting the language under subdivision (g)(1), there is no specified guidance as to what shall be the controlling procedure for establishing date of knowledge.

**D. Statutory or Regulatory Change**

No statutory change is required. However, regulatory action is required.

**E. Administrative Impact**

Staff will be required to notify taxpayers and local jurisdictions and their consultants of the new regulation through an article in the Tax Information Bulletin and a special notice to the cities and counties. Appropriate revisions must be made to Publication 28, "Tax Information for City and County Officials," and the Compliance Policy and Procedures Manual (CPPM) Chapter 9, *Miscellaneous* - Reallocation Process, when this regulation is approved by the Office of Administrative Law.

**F. Fiscal Impact****1. Cost Impact**

No additional costs. Staff will notify taxpayers of the new regulation through a Tax Information Bulletin (TIB) article. The workloads associated with publishing and

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distributing the TIB and revising Publication 28 and CPPM Chapter 9 are considered routine and any corresponding cost would be within the Board's existing budget.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact**

By further disseminating the process for reviewing local tax reallocation inquiries to the inquiring jurisdictions and their consultants, and to taxpayers, the Board is better able to administer the local tax pursuant to contracts with each city, county, city and county, and redevelopment agency in accordance with RTC section 7202. Accordingly, the cities, counties, and redevelopment agencies are better served by the Board.

**H. Critical Time Frames**

An operative date of January 1, 2003 is recommended. The regulation will become effective 30 days after approval by the Office of Administrative Law.

Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of: January 22, 2002

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**REVENUE ESTIMATE**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION



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## **PROPOSED REGULATION 1807, PROCESS FOR REVIEWING LOCAL TAX REALLOCATION INQUIRIES**

### **Recommendation and Alternatives**

#### **Staff Recommendation:**

Staff recommends the adoption of proposed Regulation 1807, in order to promulgate in regulatory form the process for appealing local tax reallocation decisions, which was previously provided to cities and counties as shown in Exhibit 3 of the issue paper.

Staff recommends the provisions of this regulation apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to existing reallocation and appeals procedures.

#### **Alternative 1:**

Board Member Dean Andal proposes to adopt staff's recommendation, except:

Make the granting of an appeal to the Board automatic rather than discretionary on the part of the Board, in subdivision (c)(5)(B).

#### **Alternative 2:**

Municipal Resource Consultants, MBIA MuniServices Company (MBIA) proposes to adopt staff's recommendation, except:

1. ☐ Delete the provisions of subdivision (a)(2)(E) that require evidence be submitted to show participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.
2. ☐ Exclude the reference to section 5080, *Burden of Proof*, of the Rules of Practice from this regulation in subdivision (c)(5)(B)(2).

**Revenue Estimate**

3. ☐ Add the words “equivalent” and “or claims containing substantially the same reasons for error as another claim or inquiry,” and delete the last sentence in subdivision (g)(1), to further clarify procedures in regard to section 6066.3 inquiries.

**Background, Methodology, and Assumptions**

**Staff Recommendation:**

There is nothing in the proposed Regulation 1807 that would impact revenues. ☐

**Alternative 1:** ☐

Alternative 1 has no revenue effect. ☐

**Alternative 2:** ☐

Alternative 2 has no revenue effect. ☐

**Revenue Summary**

The staff recommendation has no revenue effect.

The alternative proposals have no revenue effect.

**Preparation**

This revenue estimate was prepared by David E. Hayes, Research and Statistics Section, Agency Planning and Research Division. This revenue estimate was reviewed by Ms. Charlotte Paliani, Program Planning Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of January 17, 2002



**Proposed Regulation 1807 Regarding the Process for Reviewing Local Tax Reallocation Inquiries**  
**Comparison of Staff's and Proposed Language**  
Current as of January 22, 2002

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by MBIA	Summary Comments
<b>ACTION 2 –</b>  Minimum factual data necessary to establish a date of knowledge.	<p><b><u>(a) DEFINITIONS.</u></b></p> <p><b><u>(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX</u></b></p> <p><u>E. Specific reasons and evidence why the taxpayer's allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location and that it is a place of business as defined by Regulation 1802 must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.</u></p>	<p>[No language provided]</p>	<p><b><u>(a) DEFINITIONS.</u></b></p> <p><b><u>(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX</u></b></p> <p><u>E. Specific reasons and evidence why the taxpayer's allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location and that it is a place of business as defined by Regulation 1802 must be submitted. <del>In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.</del></u></p>	<p>Staff proposes that in order for an inquiry to contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed the entirety of subdivision (a)(2)(E) is necessary.</p> <p>MBIA believes this requirement involves pending legal dispute regarding several reallocation inquiries under review by Board Management. Since DOK requirements have not been changed, this requirement should not be included until pending disputes have been resolved.</p>

## Formal Issue Paper 01-048

**Exhibit 2**  
**Page 2 of 4**

**Proposed Regulation 1807 Regarding the Process for Reviewing Local Tax Reallocation Inquiries**  
**Comparison of Staff's and Proposed Language**  
Current as of January 22, 2002

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by MBIA	Summary Comments
<b>ACTION 4 –</b>  Regulations governing hearings.	<p><b>(c) REVIEW PROCESS.</b></p> <p>(5) REVIEW BY BOARD MEMBERS.</p> <p><b>(B) Consideration by Full Board.</b></p> <p>2. The Hearing.</p> <p>...</p> <p><u>This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</u></p>	<p><b>(c) REVIEW PROCESS.</b></p> <p>(5) REVIEW BY BOARD MEMBERS.</p> <p><b>(B) The Hearing.</b></p> <p>...</p> <p><u>This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</u></p>	<p><b>(c) REVIEW PROCESS.</b></p> <p>(5) REVIEW BY BOARD MEMBERS.</p> <p><b>(B) Consideration by Full Board.</b></p> <p>2. The Hearing.</p> <p>...</p> <p><u>This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice <b>excluding section 5080.</b></u></p>	<p>Staff proposes to incorporate a provision to specify this hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.</p> <p>MBIA proposes to exclude the applicability of section 5080, <i>Burden of Proof</i>, from the proposed regulation.</p>
<b>ACTION 5 –</b>  Section 6066.3 inquiries.	<p><b><u>(g) APPLICATION TO SECTION 6066.3 INQUIRIES.</u></b></p> <p><u>(1) The procedures set forth herein for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of Revenue and Taxation Code section 6066.3 for making inquiries regarding improper distributions. If inquiries regarding suspected</u></p>	[No language provided]	<p><b><u>(g) APPLICATION TO SECTION 6066.3 INQUIRIES.</u></b></p> <p><u>(1) The procedures set forth herein for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of Revenue and Taxation Code section 6066.3 for making inquiries regarding improper distributions. If <b>equivalent</b> inquiries <b>or claims containing substantially the same reasons for error as another claim or inquiry</b> regarding suspected</u></p>	<p>Staff proposes that the procedures set forth in this regulation for submitting inquiries concerning improper distributions are in addition to, but separate and apart from, procedures established under RTC section 6066.3. for making inquiries regarding improper distributions.</p>

**Proposed Regulation 1807 Regarding the Process for Reviewing Local Tax Reallocation Inquiries**  
**Comparison of Staff's and Proposed Language**  
Current as of January 22, 2002

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by Mr. Dean Andal	Regulatory Language Proposed by MBIA	Summary Comments
<b>ACTION 5 –</b> (Continued)	<u>improper distribution of local tax are received both under the procedures set forth herein and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure.</u>		<u>improper distribution of local tax are received both under the procedures set forth herein and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure.</u>	MBIA proposes to delete last sentence of subdivision (g)(1), add the words “equivalent” and “or claims containing substantially the same reasons for error as another claim or inquiry” to clarify inquiries under the application of section 6066.3.

Comparison Table.doc rev. 08-17-01

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**Regulation 1807. Process for Reviewing Local Tax Reallocation Inquiries.**

Reference: Sections 7209, 7223, Revenue and Taxation Code.

**(a) DEFINITIONS.**

For inquiries under Revenue and Taxation Code section 6066.3, see subdivision (g) of this regulation.

(1) INQUIRING JURISDICTIONS AND THEIR CONSULTANTS (IJC). "Inquiring Jurisdictions and their Consultants (IJC)" means any city, county, city and county, or transactions and use tax district of this state which has adopted a sales or transactions and use tax ordinance and which has entered into a contract with the Board to perform all functions incidental to the administration or operation of the sales or transactions and use tax ordinance of the city, county, city and county, or transactions and use tax district of this state. Except for submittals under Revenue and Taxation Code section 6066.3, IJC also includes any consultant that has entered into an agreement with the city, county, city and county, or transactions and use tax district, and has a current resolution filed with the Board which authorizes one (or more) of its officials, employees, or other designated persons to examine the appropriate sales, transactions, and use tax records of the Board.

(2) CLAIM (INQUIRY) OF INCORRECT OR NON DISTRIBUTION OF LOCAL TAX. Except for submittals under Revenue and Taxation Code section 6066.3, "claim or inquiry" means a written request from an IJC for investigation of suspected improper distribution of local tax. The inquiry must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data must include at a minimum all of the following for each business location being questioned:

(A) Taxpayer name, including owner name and d.b.a. (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. In cases where it is submitted that the location of the sale is an unregistered location, evidence that the unregistered location is a selling location and that it is a place of business as defined by Regulation 1802 must be submitted. In cases that involve shipments from an out-of-state location and claims that the tax is sales tax and not use tax, evidence must be submitted that there was participation by an in-state office of the out-of-state retailer and that title to the goods passed in this state.

(F) Name, title, and phone number of the contact person.

(G) The tax reporting periods involved.

(3) DATE OF KNOWLEDGE. "Date of knowledge" shall be the date the inquiry of suspected improper distribution of local tax that contains the facts required by subdivision (a)(2)

## Regulation 1807, Process For Reviewing Local Tax Reallocation Inquiries

of this regulation is received by the Board, unless an earlier such date is operationally documented by the Board. If the IJC is not able to obtain the above minimum factual data, but provides a letter with the inquiry, indicating what the IJC has done to obtain the minimum factual data required by subdivision (a)(2) of this regulation, the Board can use the date this inquiry is received as the date of knowledge.

(4) BOARD MANAGEMENT. "Board Management" consists of the Executive Director, Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.

**(b) INQUIRIES.**

(1) SUBMITTING INQUIRIES. Every inquiry of local tax allocation must be submitted in writing and shall include the information set forth in subdivision (a)(2) of this regulation. Except for submittals under Revenue and Taxation Code section 6066.3, all inquiries are to be sent directly to the Allocation Group in the Refund Section of the Board's Sales and Use Tax Department.

(2) ACKNOWLEDGEMENT OF INQUIRY. The Allocation Group will acknowledge inquiries after they are received. Acknowledgement of receipt does not mean that the inquiry qualifies to establish a date of knowledge under subdivision (a)(2) of this regulation. The Allocation Group will review the inquiry and notify the IJC if the inquiry does not qualify to establish a date of knowledge.

**(c) REVIEW PROCESS.**

(1) REVIEW BY ALLOCATION GROUP SUPERVISOR. The Allocation Group will investigate all accepted inquiries. If the Allocation Group concludes that a misallocation has not occurred and recommends that a request for reallocation be denied, the IJC will be notified of the recommendation and allowed 30 days from the date of mailing of the notice of denial to contact the Allocation Group Supervisor to discuss the denial. The Allocation Group's notification that a misallocation has not occurred must state the specific facts on which the conclusion was based. If the IJC contacts the Allocation Group Supervisor, the IJC must state the specific facts on which its disagreement is based, and submit all additional information in its possession that supports its position at this time.

(2) REVIEW BY REFUND SECTION SUPERVISOR. Subsequent to the submission of additional information by the IJC, if the Allocation Group Supervisor upholds the denial, the IJC will be advised in writing of the decision and that it has 30 days from the date of mailing of the decision to file a "petition for reallocation" with the Refund Section Supervisor. The petition for reallocation must state the specific reasons of disagreement with the Allocation Group Supervisor's findings. If a petition for reallocation is filed by the IJC, the Refund Section Supervisor will review the request for reallocation and determine if any additional staff investigation is warranted prior to making a decision. If no basis for reallocation is found, the petition will be forwarded to the Local Tax Appeals Auditor.

(3) REVIEW BY LOCAL TAX APPEALS AUDITOR. A conference between the Local Tax Appeals Auditor and the IJC will be scheduled. The IJC may, however, at its option, provide a written brief instead of attending the conference. If a conference is held, the Local Tax Appeals

Auditor will consider oral arguments, as well as review material previously presented by both the IJC and the Sales and Use Tax Department. The Local Tax Appeals Auditor will prepare a written Decision and Recommendation (D&R) detailing the facts and law involved and the conclusions reached.

(4) REVIEW BY BOARD MANAGEMENT. If the D&R's recommendation is to deny the petition, the IJC will have 30 days from the date of mailing of the D&R to file a written request for review of the D&R with Board Management. The request must state the specific reasons of disagreement with the D&R and submit any additional information in the IJC's possession that supports its position. Board Management will only consider the petition and will not meet with the IJC. The IJC will be notified in writing of the Board Management's decision. If a written request for review of the D&R is not filed with Board Management within the 30-day period, the D&R becomes final at the expiration of that period.

(5) REVIEW BY BOARD MEMBERS. If Board Management upholds a finding that no improper distribution has occurred, the IJC may file a petition for hearing by the Board. The petition for hearing must state the specific reason of disagreement with Board Management findings.

(A) Petition for Hearing. The IJC shall file a petition for hearing with the Board Proceedings Division within 90 days of the date of mailing of Board Management's decision. The request shall include the name of the Board Member whose district issued the seller's permit of the taxpayer whose local tax allocation is at issue in the inquiry and the name of the Board Member of the jurisdiction that filed the inquiry. If a petition for hearing is not filed within the 90-day period, the Board Management's decision becomes final at the expiration of that period.

**(B) Consideration by Full Board.**

1. Consent Calendar - Board Proceedings Division will place the petition for hearing on a consent calendar for consideration by the full Board. A petition for hearing must be approved by a majority vote of the Board Members. If the petition for hearing is not decided by the full Board within 90 days of the first calendar date, the matter will be considered closed.

2. The Hearing. If the Board decides to hear the matter, the Board Proceedings Division will place it on the Hearing Calendar for consideration by the full Board. All interested local jurisdictions that would have appeals rights under subdivision (e) of this regulation will also be notified of the scheduling of the Board hearing. This hearing shall be conducted in accordance with sections 5070 to 5087 of the Rules of Practice.

(C) Presentation of New Evidence. If new arguments or evidence not previously presented at the prior levels of review are presented after Board Management's review and prior to the hearing, Board Proceedings Division shall forward the new evidence to the Local Tax Appeals Auditor for review and recommendation to the Board. Notwithstanding subdivision (c)(5)(B)(2) of this regulation, no additional evidence or arguments not previously presented at the prior levels of review or considered by the Local Tax Appeals Auditor will be considered at the Board hearing.

**(d) TIME LIMITATIONS.**

(1) An IJC will be limited to one 30-day extension of the time limit established for each level of review through the Local Tax Appeals Auditor level.

(2) If action is not taken beyond acknowledgement on any inquiry for a period of six months at any level of review, the IJC may request advancement to the next level of review. For the purpose of these procedures, "action" means taking the steps necessary to resolve the inquiry.

(3) By following the time limits set forth in subdivisions (c), (d)(1) and (d)(2), any date of knowledge established by the original inquiry will remain open even if additional supporting information is provided prior to closure. If the time limits or any extensions are not met, or if closure has occurred, any additional supporting documentation submitted will establish a new date of knowledge as of the date of receipt of the new information.

**(e) APPEAL RIGHTS OF JURISDICTIONS THAT WILL LOSE REVENUE AS THE RESULT OF A REALLOCATION.**

(1) If at any time during this review process the Board's investigation determines that a misallocation has occurred, any jurisdiction that will lose 5% of its average quarterly allocation (generally, the prior four calendar quarters) or \$50,000, whichever is less, will be informed of the decision and be allowed 30 days from the date of mailing the notice to contact the Allocation Group to discuss the proposed reallocation. The losing jurisdiction may follow the same appeals procedure as described in subdivisions (c) and (d) of this regulation. "Losing Jurisdiction" includes a gaining jurisdiction where the original decision was overturned in favor of a previously losing jurisdiction. The reallocation will be postponed until the period for the losing jurisdiction to request a hearing with the Allocation Group has expired.

(2) If the losing jurisdiction contacts the Allocation Group and subsequently petitions the proposed reallocation, the postponement will be extended pending the final outcome of the petition.

**(f) LIMITATION PERIOD FOR REDISTRIBUTIONS.**

Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution.

**(g) APPLICATION TO SECTION 6066.3 INQUIRIES.**

(1) The procedures set forth herein for submitting information to the Board concerning improper distributions are in addition to, but separate and apart from, any procedures established under the authority of Revenue and Taxation Code section 6066.3 for making inquiries regarding improper distributions. If inquiries regarding suspected improper distribution of local tax are received both under the procedures set forth herein and section 6066.3, duplicate submissions will not be processed. The date of the earliest submission shall be controlling as to whether the request is to be handled under the provisions of this regulation or section 6066.3, and the date of knowledge shall be established under the controlling procedure.



(2) The terms and procedures set forth in subdivision (c)(2) through (c)(5) of this regulation shall also apply to appeals from reallocation determinations made under Revenue and Taxation Code section 6066.3.

(h) The provisions of this regulation shall apply to reallocation inquiries and appeals filed after January 1, 2003. Inquiries and appeals filed prior to this date shall continue to be subject to existing inquiries and appeals procedures. However, for inquiries filed prior to January 1, 2003, the IJC may elect in writing to proceed under the provisions of this regulation as to appeals not already decided or initiated. In such cases, failure to make such written election prior to appealing to the next step of review under the existing procedures shall constitute an election not to proceed under the provisions of this regulation. If written election to proceed under the provisions of this regulation is made, the provisions of this regulation become applicable the date the election is received by the Board. Neither election shall be subject to revocation.

Draft

**6066.3. Collection of information by cities and counties for seller's permits.**

(a) A city, county, or city and county may collect information from persons desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property under this part and shall transmit that information to the board. The information shall be provided to the board in a format to be determined by the board after consulting with the League of California Cities and the California State Association of Counties.

(b) The information submitted to the board under subdivision (a) shall serve as all of the following:

(1) The preliminary application for a seller's permit. (2) Notification to the board by the city, county, or city and county of a person desiring to engage in the business of selling of tangible personal property in that jurisdiction. (3) Notice to the board for purposes of redistribution under Section 7209.

(c) The board shall issue a determination regarding issuance of a seller's permit and receipt of notification for purposes of paragraphs (2) and (3) of subdivision (b). The board shall provide a copy of that determination and receipt of notification to the city, county, or city and county from which the board has received information under subdivision (a). The board shall make its determination as follows:

(1) For persons for whom a determination can be made based on the information submitted, the determination shall be issued within 30 days of receipt of the information.

(2) For persons for whom additional information is required before a determination can be made, the determination shall be issued within 120 days of receipt of the information.

(d) The board shall, after consulting with the League of California Cities and the California State Association of Counties, adopt standardized data addressing and naming conventions that are compatible with local jurisdiction conventions for new registrants and, to the extent possible, for current accounts.

(e) A city, county, or city and county may not charge applicants a fee for collecting and transmitting information pursuant to this section.

(f) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

**6066.4. Providing of seller's permit to cities and counties.** (a) A city, county, or city and county may require each person desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property to provide his or her seller's permit account number, if any.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

November 6, 2001

Ms. Charlotte Paliani  
Program Planning Manager  
State Board of Equalization  
450 N St (MIC:92)  
P. O. Box 942879  
Sacramento, CA 94279-0092

Re: Proposed Regulation 1807, Process For Reviewing Local Tax Reallocation  
Inquiries.

Dear Ms. Paliani:

We have the following comments on the materials regarding the referenced topic that were distributed at the first meeting of interested parties held in Sacramento on October 18, 2001.

1. Subdivision (a) (2). This provision departs from the similar rule contained in the 1998 Special Notice regarding the "Process" that allowed BOE Staff to accept an inquiry as creating a good date of knowledge despite its failure to include all necessary facts. If the "IJC has made a good faith effort to obtain sufficient facts but has been unable to do so " it could still submit an explanatory letter "indicating what it has done to obtain those facts." This equitable "safety-valve" should be restored to cover such situations.
2. The final sentence of subdivision (a) (1) states a rule of substance that is in dispute in a number of pending inquiries. Such a rule should not be included in a procedural regulation until the pending dispute has been disposed of authoritatively. Otherwise additional such inquiries cannot establish a good date of knowledge until the test case or cases are decided.
3. The reference to subdivision "(b) (1)" in the third line of subdivision (a) (3) should probably be to "(a) (2)" instead. This is because the required factual data is actually listed in subdivision (a) (2).
4. Subdivision (a) (3) references dates of knowledge being "operationally documented by the Board." A means of searching for such DOK's should be provided the public by jurisdiction and sales tax registration number in order to reduce the submission of duplicate claims.
5. In subdivision (b) (1) we suggest adding the words, "or electronically" after the words, "in writing" in the second line in order to cover the majority of present submissions as well as those anticipated in the future.
6. Subdivision (b) (2) requires the board to notify the taxpayer affirmatively when a date of knowledge has been established by submission of an inquiry, even though the inquiry may not have been resolved. This appears to represent a

- change in present practices that is probably unwise. First of all, it may mean that staff would be required to investigate an inquiry twice, once to make the DOK determination and another time to respond definitively. DOK disputes under the present "Process" are the exception rather than the rule. In any event, to be fair to the IJC any initial rejection on DOK grounds should be furnished within one quarter. In this way, if the rejection was due to an oversight, it may be cured promptly. It appears that the present "Process" under which inquiries are normally accepted as creating good DOK's if they meet the "sufficient factual data" tests in proposed subdivision (a) (2) has worked effectively and should not be discarded.
7. In order to permit the IJC to be fully informed regarding the decision to file an appeal with the Local Tax Appeal Auditor ("LTAA") the Allocation Group Supervisor should be required to include in his denial letter all facts in staff's possession at that time that support the denial. See subdivision (c) (1) that requires the IJC to supply all known facts supporting its position in its appeal letter to the Allocation Group Supervisor. Each party should be encouraged to disclose known facts as soon as possible in order to reduce the length of disputes and minimize any appeal backlog.
  8. The words "with the Allocation Group supervisor's findings" are repeated in lines six and seven of subdivision (c) (2).
  9. Subdivision (c) (2) omits any reference to the preparation of an "appeal file" and "summary analysis" that are provided for at this stage of the Process. Further, the Process calls for a final review after the preparation of these documents by the Refund Section Supervisor ("RSS") before the petition is forwarded to the LTAA. Are these omissions stylistic only, or do they imply that these steps in the present Process will be skipped in the future?
  10. Subdivision (c) (2) substitutes the word "will" for "would" (as used in the Process) in the RSS's determination whether there is additional information "available" regarding the possible need for any reallocation adjustment. This change implies that the RSS must determine in advance whether the results of any reinvestigation "will" necessarily justify a reallocation before the reinvestigation can be ordered. Under the Process the RSS has been willing to authorize additional factual development whenever the circumstances appeared to require it. We suggest the proposed wording of subdivision (c) (2) be revised to reflect the present practice which has not proven controversial. To effect such a change the language of the third sentence of the subdivision that appears in the ninth line could be stricken and replaced with:

" staff investigation is warranted prior to determining whether a reallocation adjustment should not be granted."

11. Subdivision (c) (3). The practice under the Process has been for the IJC to present its factual and legal position at the hearing and for the staff representative of the Allocation Group to rebut as deemed appropriate. Sometimes little or no staff presentation takes place at the hearing other than explanations made by the LTAA. After the hearing has closed, the LTAA has sometimes undertaken additional factual development on his own and then issued a D & R based on the results of that investigation. This practice undermines the fairness of the hearing and the objectivity of the LTAA. We suggest that the following language be added to the end of subdivision (c) (3):

“If the Local Tax Appeal Auditor determines that additional factual development is necessary before he can issue a Decision and Recommendation, he shall notify the IJC of that determination when made, and of the results of any reinvestigation when completed. The IJC may, if necessary, furnish rebuttal before any Decision and Recommendation may be issued and such shall be considered in the Local Tax Appeal Auditor's ruling.”

12. Subdivision (c) (5) contains the rules governing review by Board members. Under the Process, no limitation was placed on the time after the decision of Top Management within which a Board Member could agree to seek review by the full Board. The absence of such a limitation was probably appropriate during the period the Process was being implemented. However, in promulgating a formal regulation reflecting the Process, a time limit on appealing to Board members should probably be phased in to permit an orderly reduction of the current appeal backlog. Notwithstanding, the proposed limit of 90 days in the draft regulation is unreasonably short given the lack of any limit under the current rules. We propose that Board Member appeals of matters that have been decided by Top Management when the regulation becomes effective be timely at any time within the next two years in order to permit the present back-log to be eliminated. For cases arising under the new regulation thereafter, a time limit of one year should suffice.
13. Subdivision (c) (5) fails to provide advance guidance regarding the procedures that will apply to Board Member appeals. That may be another reason why no such appeals have yet been heard. We suggest that the relevant portions of present Article 7 of the Rules of Practice of the Board be cross-referenced in the Proposed Regulation to apply to Board Member appeals. Another alternative would be to develop an entirely new procedure permitting Board Members to delegate the responsibility of hearing such matters to an independent administrative law judge. The members could retain discretion to approve or disapprove rulings by the ALJ, but would not be required to participate in such cases directly.

14. Subdivision (c) (5) also provides for "all interested local jurisdictions" to be notified of the scheduling of any Board Member hearing. Presumably, this is intended to mean any jurisdiction that would qualify for appeal rights under subdivision (e) of the proposed regulation. In any event, the notice requirement of subdivision (c) (5) should apply only to "all local jurisdictions that would have appeal rights under subdivision (e) if the appeal were successful." Otherwise, jurisdictions that have only a tiny interest in a particular appeal may receive such notices and become unnecessarily concerned.
15. Subdivision (d) (3) contains the rule provided in the Time Limitations Section of the existing Process that supplying additional information after an initial inquiry has been filed will not destroy a DOK established by an inquiry that contained sufficient facts. However, the cross-reference to subdivision (c) (2) in the first sentence of the subdivision appears to be a typographical error. We suggest that substituting "subdivision (a) (2) " (which contains the "sufficient factual data" test) for "subdivision (c) (2)" would clarify the intended meaning of the first sentence of subdivision (d) (3).
16. Under the present Process, if an appeal of a losing jurisdiction is successful in overturning an initial staff decision in favor of an inquiring jurisdiction, the latter will be granted appeal rights as well to contest the successful appeal. In order to make it clear that there is no intent to eliminate this equitable practice, we suggest adding a new subdivision (e) (3) to read as follows:

"(3) If the losing jurisdiction's appeal succeeds in overturning the original Board decision in favor of the IJC, the IJC will be entitled to exercise appeal rights under subdivisions (c) and (d) of this regulation."
17. There appears to be a substantial possibility for confusion regarding the meaning and effect of certain provisions of the Draft Memorandum of Understanding executed by the Board, the League of California Cities and the California State Association of Counties regarding the procedures for making submissions under AB 990. RTC Section 6066.3 (a) as enacted by AB 990 permits local jurisdictions to collect information from persons desiring to engage in business in their jurisdiction and subsection (b) describes the purposes to be served by its submission to the Board. These purposes include serving as preliminary application for a seller's permit, notification of intent to sell tangible personal property in a particular jurisdiction, and notice to the board for purposes of redistribution under RTC Section 7209.

The first two purposes relate to new businesses and to existing businesses that have located in the particular jurisdiction, while the third relates to the quarterly periods that are subject to redistribution of Bradley-Burns revenues

under RTC Section 7209. No provision in AB 990 purports to alter the information required to establish a good date of knowledge under RTC Section 7209, as implemented for more than forty years by BTGB 59-12. (See Initial Discussion Paper, Proposed Regulation 1807, dated October 18, 2001.) However, the general information requirements of BTGB 59-12 that must be met to create a good date of knowledge under RTC Section 7209 have been reflected in Proposed Regulation 1807 (a) (2) and (a) (3). Confusion arises in comparing those provisions with Exhibit B to the Memorandum of Understanding, AB 990 Submittal Threshold Information, because the language of the two types of cases described in Exhibit B does not match that contained in Proposed Regulation 1807 (a) (2) and (a) (3). Nor is there any necessary reason why they should, since submissions under AB 990 and those under Proposed Regulation 1807 (a) (2) and (a) (3) will most often be for different purposes.

The AB 990 filings for the most part will involve new businesses that have never been registered and existing businesses whose activities in the notifying jurisdiction have not been registered at all. Thus, AB 990 was aimed principally at taxpayers that have opened new businesses or altered their business locations. Usually, the information that the notifying city will provide the Board with respect to these classes of taxpayers will not involve complex factual inquiries or legal analysis. Nonetheless, the draft attachment to the Memorandum of Understanding headed "Scenarios Covered in B. above: (not a complete listing)" and the "AB 990 Request For Action-Decision Table" provided below it imply that much broader types of misallocation requests may be submitted under the AB 990 process established by the MOU.

Although permitting the more complex inquiries to be submitted under the AB 990 process may not be objectionable, when so made, they should meet the same information requirements required by BTGB 59-12 and Proposed Regulation 1807 (a) (2) and (a) (3) to establish a good date of knowledge. Therefore, to prevent confusion among the three types of submissions possible under the AB 990 process, a new Paragraph C should be added to Exhibit B to the MOU to list the additional requirements for complex inquiries, including particularly the "specific reasons why the taxpayer's allocation is questioned." Further, the AB 990 process should be clarified by requiring correct labeling of the three categories of notifications that local jurisdictions may make under it. These categories shall be "Unregistered Businesses, Incorrectly Registered Businesses, and Incorrectly Reporting Businesses."



18. Subdivision (g) (2) of the Proposed Regulation creates additional opportunities for confusion. It seems to imply that the procedures established in the Memorandum of Understanding are of equal stature with those to be provided in the formal regulation. If that is actually intended or necessary, then those procedures should be added to Proposed Regulation 1807. We suggest it be stricken and replaced with the following:

(2) Claims for misallocation or submissions of information regarding Unregistered, Incorrectly Registered or Incorrectly Reporting taxpayers may be submitted under this regulation or under the process adopted by the Board to implement Section 6066.3 of the Revenue and Taxation Code. If inquiries of the same category for the same jurisdiction and taxpayer are received by the Board, only the inquiry received first in time will be accepted and processed. If, however, an inquiry regarding an Incorrectly Reporting Taxpayer is submitted with specific reasons and evidence why the taxpayer's allocation is questioned that later prove correct, it will normally be accepted and processed in preference to any submission that does not contain such information. Inquiry or claim rejections for these reasons will also qualify for the appeal procedures contained in subdivision (c) of this regulation.

19. At this time we reserve further comment on the Memorandum of Understanding pending further analysis.

We appreciate the opportunity to furnish these comments on Proposed Regulation 1807.

Yours very truly,

Albin C. Koch  
General Counsel  
Municipal Resource Consultants,  
An MBIA-MuniServices Company

Cc: Dave Boisselle  
Janis Varney

The California Sales and Use Tax Law imposes a sales tax upon retailers for the privilege of selling tangible personal property at retail in the State of California. The use tax is complementary (and mutually exclusive) to the sales tax and is imposed upon the consumer for the storage, use, or other consumption of tangible personal property in the State of California. Either the sales tax or the use tax applies to all retail sales of tangible personal property to consumers in California, unless specifically exempted by statute.

Starting in 1945, cities began levying sales and use tax separate from those imposed by the State of California. Under the locally imposed programs, retailers were required to file separate sales and use tax returns, sometimes at different rates of tax, for each city in which they were engaged in business. Cities adopted their own exemptions and conducted their own audits of retailers. Businesses that operated within cities that did not impose a local sales tax were viewed as having an unfair competitive advantage over those operating in cities imposing a tax. Counties were not allowed to impose local sales and use taxes.

In response to these concerns, the Bradley-Burns Uniform Local Sales and Use (“Local”) Tax Law was enacted during the 1955 legislative session and was added to the Revenue and Taxation Code (RTC). RTC sections 7202 and 7203 authorized counties to levy a one-percent sales and use tax that would be administered by the state. Under section 7202(g), the cities may levy a local tax at a rate of up to one percent to offset the county tax within their jurisdictions, thus maintaining the uniform rate. During the 1972 Legislative Session, the counties were allowed to raise their local tax rate to the current 1.25%. The extra one-quarter percent is dedicated to the counties to finance local transportation projects.

In 1956 the responsibilities for the Local Tax Program were initially assigned to Business Taxes Department (now Sales and Use Tax Department) staff in various sections. On July 1, 1960, the Local Tax Unit (later renamed the Local Revenue Allocation Section) was formed to administer all aspects of the Local Tax program including requests for reallocation. Subsequently, the Local Revenue Allocation Section was transferred to the Special Taxes and Operations Division and then to the Administration Division. In December 1995, the responsibility of investigating requests for reallocations was transferred to the newly formed Allocation Group within the Refund section of the Sales and Use Tax Department.

With few exceptions, the exemptions and exclusions from the local sales and use taxes mirror those of the state sales and use tax. The one-and-one-quarter percent county tax applies uniformly throughout each county in the state, as each county levies this tax. The city taxes apply to sales within their jurisdictions, and offset the county taxes to maintain a uniform rate. The county gets the 0.25 percent tax over and above the one-percent tax on all sales within its borders. With respect to unincorporated areas of a county, the county retains the entire amount of the one-and-one-quarter percent local tax.

The Board administers the local tax pursuant to contracts with each city, county, city and county, and redevelopment agency in accordance with RTC sections 7202 and 7223. Taxes collected by the Board are allocated on a quarterly basis, less the Board’s administrative costs imposed pursuant to RTC section 7204.3. Limitations on redistributions made by the Board are in accordance with RTC section 7209. Collection of information by cities and counties for seller’s permits is pursuant to RTC section 6066.3.

For the purpose of the following discussion, the term “cities” includes: cities, counties, cities and counties, and redevelopment agencies unless otherwise specified. With the enactment of the Local Tax Law, cities were able to establish a source of revenue without the burden of establishing a system to administer the program. Existing cities were able to reduce the costs of administration for both their own city and the retailers located within their city. An additional benefit of the Local Tax Law was that the counties could impose a local sales and use tax. Retailers could file only one return to remit taxes to both the cities and the state. In addition, audits are now conducted for both tax programs by one agency.

As the tax base was generally the same, it was easier for retailers to determine what was taxable and what was not for both the state and the cities. The local tax system also afforded merchants protection from untaxed competitors located in nearby cities. Cities supported the Local Tax Law for these reasons as well as the cost savings derived from the use of the administrative and audit resources of the state. All counties and cities in California participate in this program. In fiscal year 1999-2000, approximately \$4.1 billion in local tax revenues were returned to the state’s 58 counties and 475 cities. In recent years, cities have become increasingly dependent upon local sales and use tax revenues to support their programs.

Because local taxes are locally enacted, the activities giving rise to local sales or use tax revenues must occur within the jurisdiction seeking to tax those activities. Under the local tax system, the Board has always had inherent power to ensure that local tax is allocated to the jurisdiction in which those activities occurred.

### **Limitations on Redistributions**

Retailers in California are assigned a local tax area code based on the jurisdictions in which their activities occur. Occasionally, for a variety of reasons, the local tax is allocated erroneously to the incorrect jurisdiction. When the Local Tax Law was first enacted, there were no limitations on how far back the Board could reallocate the revenue that was initially allocated to the incorrect jurisdiction. However, over a period of time, several significant local tax misallocations were discovered on returns reporting local taxes. In some cases the necessary reallocations could have caused severe financial harm to the cities that would lose the local tax previously allocated to them.

In response to this, the Legislature enacted, with the Board's support, RTC section 7209 (Stats. 1959), with the specific intent of limiting the impact of reallocations on the cities. Section 7209, Limitations redistributions, provides that:

The Board may redistribute tax, penalty and interest distributed to a county or city other than the county or city entitled thereto but such redistribution shall not be made as to amounts originally distributed earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of the improper distribution.

In practice, three quarters are subject to reallocation as the Board is processing the previous quarter’s return during the current tax quarter. The law does not provide for notification to either the gaining or losing jurisdiction nor does it provide any procedures for appeal of the decisions made by the Board to make a redistribution of local tax revenues.

On September 11, 1959, the Board's Business Taxes Department issued Business Taxes General Bulletin (BTGB) 59-12. BTGB 59-12 was issued seven days prior to the effective date of RTC section 7209 and presumably reflected the thinking that went into this law section. BTGB 59-12 states the general rule that the Board would "be considered to have knowledge of an improper distribution when an employee of the Board has such knowledge." When a taxpayer or other person writes to the Board "questioning the correctness of an allocation and setting forth facts which indicate the probability of an improper distribution, and such distribution is later found to be erroneous, the Board will be considered to have knowledge of the erroneous allocation when the letter is received..." When the facts indicating the probability of an erroneous distribution are already in the records of the Board, however, "the Board will not be considered to have knowledge of the erroneous allocation until an employee of the Board has examined the document and questioned the tax allocation."

The term "date of knowledge" (DOK) appears in neither the statute nor BTGB 59-12. It is a term of art that has developed between the cities and the Board to discuss redistributions under RTC section 7209. The provisions of BTGB 59-12 are discussed in the Board's Publication 28, "Tax Information for City and County Officials."

RTC section 7209 does not specify a process for administrative review of initial allocation decisions. Heretofore, appeal has been made directly to the Executive Director with the advice of the Chief Counsel, Assistant Chief Counsel for Business Taxes, and the Deputy Director of the Sales and Use Tax Department.

The rules set forth in BTGB 59-12 have been consistently applied to local tax allocation questions for forty-one years and have been agreed to by the cities. While their application in particular cases has been questioned, there appears to be no controversy regarding the rules themselves.

### **Inquiries from Inquiring Jurisdictions and their Consultants (IJC)**

One question that has arisen concerns written inquiries from IJC's. There is an issue regarding the DOK when a taxpayer or other person writes to the Board "questioning the correctness of an allocation . . . and such distribution is later found to be erroneous." The Board had consistently interpreted that phrase to mean that if an IJC wrote in with sufficient information to indicate the probability of an improper allocation, and the Board determined upon investigation that the questioned allocation was proper, any subsequent communication containing additional facts which caused the Board to change its position constitutes a new communication with a new DOK. Some IJCs contended it meant that if the information contained in the first communication was later found to support a reallocation, the date of receipt of the first communication supplies the DOK.

In an effort to resolve this issue and to create a formalized appeals process, staff, in conjunction with both of the major consultant firms and several individual jurisdictions developed a formalized process for reviewing reallocation inquiries. In February of 1996, The Local Revenue Committee of the Board approved the "Process for Reviewing Reallocation Inquiries" (the "Process"). In June 1996 a special notice regarding the Process was sent to all local tax jurisdictions. The Process provides for an appeal from the initial decision and timelines within which the Board and the cities had to perform various actions. If the timelines are maintained,

the DOK supplied by the original city request remains open. There are several levels of appeals, and the Board Members may ultimately hear an appeal if three members agree to hear the appeal. Several cities requested automatic appeal to the Board, but the Board Members rejected that in favor of discretionary appeal. It was determined at the time that the Process would not be put into a regulation until the details of the process were established. In October 1998, the Process was amended to substitute a hearing before a hearing auditor instead of an appeal to the Headquarters Operations Manager. The hearing auditor prepares a Decision and Recommendation explaining the reasons for his or her decision.

The Process incorporates two important concepts from BTGB 59-12. First, the inquiry from the IJC must contain “sufficient facts to indicate the probability of a misallocation.” Second, if the inquiry meets this standard, the DOK is the date on which the inquiry is received, not the date the inquiry is sent. If it does not meet this standard, the inquiry is returned to the city and no DOK is established.

### **Provisions of AB 990**

In 1999, AB 990 (Stats. 1999, Ch. 908 in effect January 1, 2001) added sections 6066.3 and 6066.4 to the RTC (see Exhibit 4).

The provisions of AB 990 authorize cities and counties to collect information from persons seeking to engage in the business of selling tangible personal property and to transmit that information to the Board. AB 990 requires the Board to issue permits to applicants within specified time periods. AB 990 also authorizes cities and counties to require each person desiring to engage in business in that jurisdiction for the purposes of selling tangible personal property to provide his or her seller’s permit account number, if any. The AB 990 procedure, as it applies to reallocation inquiries under the statute, was established to run in addition to, and not replace, the provisions of the Process concerning submitting inquiries. The Process does not address initial allocation inquiries made under AB 990. Only appeals from an AB 990 allocation determination are to be handled under the Process. The proposed regulation incorporates the application of the Process for reviewing local tax reallocation determinations made under AB 990 in addition to review of inquiries made under the Process itself.